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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,964	06/21/2001	Ya Fang Liu	YFLU-P02-001	6742

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WOLF GREENFIELD & SACKS, PC
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON, MA 02210-2211

EXAMINER

HARLE, JENNIFER I

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/886,964

Applicant(s)

LIU, YA FANG

Examiner

Jennifer I. Harle

Art Unit

1654

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10/4/04 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 04 October 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached continuation sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE

Claim(s) objected to: _____.

Claim(s) rejected: 36,39,40,43 and 44.

Claim(s) withdrawn from consideration: 1-35,37,38,41 and 42.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


MICHAEL MELLER
PRIMARY EXAMINER

Applicants's amendment to claims 36 and 40 do not put the claims in better condition for allowance, as they create new issues that require further search and/or consideration, i.e. whether they are fully supported by the specification, in that the specification appears to show the importance/critical nature of ATP binding; support for blocking the biological pathway but not inhibition at the specific ATP binding site. Thus, the blocking could be accomplished by anything, as there does not appear to be any specific support for an MLK kinase inhibitor. Applicant's revisions create/change the compounds to be considered. Additionally, it is unclear from the specification what is being blocked to change the effect upstream/target - at least two events normally occur before activation and the claims appear to only want inhibition and that phosphorylation is the critical step. This would require new analysis and new search. Additionally, the patent references cited pertain only to apoptosis associated with tumorigenesis and cancer and are not equivalent art. The Journal of Biological Chemistry is not persuasive for MLK2, as fails to show the status of the state of the art at the time of the invention. Further, Applicant has not shown any convincing evidence for treating or preventing Parkinson's disease.

Continuation of 5. does NOT place the application in condition for allowance because: Applicants' revisions create/change the compounds to be considered. Further, Applicant has not shown any convincing evidence for treating or preventing Parkinson's. Moreover, Applicants' arguments that the '297 patent fails to meet the criteria to support the obviousness rejection by the absence of any teaching regarding the claimed compounds binding site is not persuasive, as this part of the claim has not been entered for the reasons set forth above and the claims are not directed to any disease other than Parkinson's thus the "any other apoptosis-associated disorder" argument is not persuasive or germane. Applicants' argument regarding selection of any one of the listed adenovirus constructs has been previously addressed and is not persuasive for the reasons previously set forth, i.e. a method of screening for suitable compounds to treat neurodegenerative disorders using adenovirus constructs is presented and exemplified with a specific construct along with a clear suggestion that the following groups of adenovirus constructs can be used according to the methods of the invention providing ample motivation to select any of the listed constructs with a reasonable likelihood of success and a reason to select the particular MLK construct out of the list is not necessary when Miller considers all of the constructs functional equivalents. This was never argued by Applicants and thus the arguments were not deemed persuasive.



MICHAEL MELLER
PRIMARY EXAMINER